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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,579	05/09/2005	Claire Raynal-Olive	P-5617	4559

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EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/511,579

Applicant(s)

RAYNAL-OLIVE ET AL.

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 8-21 and 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 22 is/are rejected.
- 7) ☒ Claim(s) 1-7 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it includes the unnecessary title of the application, comprises two paragraphs instead of one, and includes the extraneous "Figure 2". Correction is required. See MPEP § 608.01(b).

3. Claims 8-21 and 23-25 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 8-21 and 23-25 have not been further treated on the merits.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1-7 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 4, it is unclear which antecedent "comprising" refers back to. In lines 6-7, "the latter" is indefinite as to which antecedent is being referred to. In line 8, "package which comprises" is ungrammatical. In lines 9-10, "at least partial" is indefinite as to its meaning, "partial" what? In lines 10-11, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation following the phrase is part of the claimed invention. See MPEP § 2173.05(d).

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the

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broad recitation "decontamination gas", and also recites "hydrogen vapors" which is the narrower statement of the range/limitation.

In claim 1, line 12, "and/or" is indefinite and alternative in meaning, rendering the scope of the claim indefinite. In line 13, "this layer" is indefinite and inconsistent with "at least one layer" of line 8, and should be --each said layer--. In line 14, "it" is indefinite as to what antecedent is being intended. See also line 25. In line 16, "it" is indefinite what antecedent is being referred to, and "this position" lacks antecedent basis. In lines 16-17, "the objects contained in the package" lacks antecedent basis for being actually contained, as the antecedent infers objects, but does not locate objects in the box as now defined. In line 17, "said layer or layers" is inconsistent with line 8 and should be --said at least one layer--. In lines 24-25 and 33, "these same objects" should be --the objects--.

In claim 2, lines 2-3, "said layer or at least one of said layers are" is indefinite as to its antecedent and should be --said at least one layer is--. In lines 3-4, "attached to the covering sheet, especially by adhesive bonding or welding" is again a broader range in conjunction with a narrower range, which is indefinite

In claim 3, lines 2-3, "said layer or at least one of said layers are" is indefinite as to its antecedent and should again just be --said at least one layer is--. In lines 5-6, "this end" lacks antecedent basis. In line 7, "this box" should be --the box--.

In claim 4, lines 2 and 3, "said layers" lack antecedent basis, as "at least one layer" has been previously defined, and the same antecedent term should be substituted.

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In claim 6, line 3, 'the other' indicates only one other layer, which has not been so defined. See also claim 7, line 3.

6. Applicants should review the presently withdrawn claims 8-21 and 23-25 for similar indefiniteness as described above, such as "this..." should be --the...--, and the use of "and/or" being indefinite. In claim 8, line 2, "layer or layers" is again improper and should --the at least one layer--. See also claims 9-11. In claim 8, line 4, "when they are in place in the box" contradicts the definition previously made that they are part of the box, and in line 6, "this box" should be --the box--. In claim 9, line 4, "they" and "their" are indefinite as to which antecedent is being referred back to. Claims 12-16 contain the trademark/trade name TYVEK, as well as several others. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. Claim 18 repeatedly uses the improper broader and narrower conjunction, as do claims 23-25. Claim 18 refers to claim 1, then double recites all the structure already set forth in claim 1. In claim 18, line 12, "the latter" is indefinite. In claim 19, line 4, "this layer" lacks antecedent basis for one particular layer. Claims 23-25 should begin with "A", not "The".

7. Claims 1-7 and 22 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Each pertains to a package that comprises material and structure that render the package selectively sterilizable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Tuesday through Thursday from 7:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Bryon P. Gehman".

Bryon P. Gehman
Primary Examiner
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BPG